APPENDIX A

Order of Mr. Justice Harlan Extending Petitioners' Time for Filing Cross-Petition for Certiorari

SUPREME COURT OF OF THE UNITED STATES

No. , October Term, 1958

AMERICAN-FOREIGN STEAMSHIP CORPORATION, ET AL.,
Petitioners,

v.

THE UNITED STATES.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of counsel for petitioner(s),

IT IS ORDERED that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including

August 24th, 1959.

(s) JOHN M. HARLAN
Associate Justice of the Supreme Court of the United States

Dated this 10th
day of June, 1959.

APPENDIX B

Charter Hire Accounting Suits (Other Than Those Included in the Instant Petition) Now Pending in United States District Courts and the Dates When the Libels Were Filed

Southern District of New York: American Export Lines Inc., No. A. 191-109 (5-3-57); W. R. Chamberlin & Co., No. 184-186; Eastport Steamship Corp., No. A. 190-175 (2-14-57); Isbrandtsen Co., Inc., No. A. 184-51 (12-21-54); Prudential Steamship Corp., No. A. 192-293 (10-24-57); Dichman, Wright & Pugh, Inc., No. 182-397 (5-27-54).

Eastern District of Massachusetts: Eastern Gas and Fuel Associates, No. A. 55-26-W (5-10-55); Sprague Steamship Corp., No. A. 53-80-F (12-23-53).

District of Delaware: Blidberg Rothchild Co., Inc., No. A. 1758 (2-7-57); Marine Transport Lines, Inc. and Marine Navigation Co., Inc., No. A. 1747 (6-18-56); Pacific-Atlantic Steamship Co., No. A. 1722 (6-22-55) and No. A. 1737 (11-16-56); South Atlantic Steamship Line, No. A. 1735 (5-18-55) and No. A. 1757 (1-23-57); Smith-Johnson Steamship Corp., No. A. 1755 (11-16-56).

District of Maryland: Black Diamond Steamship Corp., No. A. 3885 (11-23-56).

Eastern District of Louisiana: Lykes Bros. Steamship Co., Inc., No. A. 2817 (7-19-55); Mississippi Shipping Co., Inc., No. A. 2845 (9-9-55).

Northern District of California: Coastwise Line, No. A. 27398 (10-5-56); Pacific Far East Line, Inc., No. A. 27170 (7-13-55); Pacific Transport Lines, Inc., No. A. 27101 (4-15-55); Pope & Talbot, No. A. 27161 (7-6-55).

Western District of Washington: American Mail Line, Ltd., No. A. 16231 (8-17-56); James Griffiths & Sons, Inc., No. A. 16218 (7-11-56); Olympic Steamship Co., Inc., No. A. 16233 (8-24-56); States Steamship Co., No. A. 7702 (8-23-56).

APPENDIX C

Excerpt Relating to Clause 13 From Respondent's Brief (pp. 14-15) in South Atlantic Steamship Line, Inc. v. United States, Admiralty No. 1757, District Court of Delaware

Article 7 of the first cause of libel No. 1757 differs, however, in adding a special claim that, contrary to its regulations, respondent, after operations had begun, imposed an arbitrary ceiling of $150 per vessel per day on the amount of libelant's fair and reasonable overhead expenses allocable to operations under the charter (as opposed to and in addition to any actual expenses relating to operating the chartered vessels). This claim, although obscurely alleged, does not involve violation of the statutes, but obviously refers to a mere matter of acceptance of libelant's cost accounting adjustments for reasonable overhead "under the agreement" itself and thus does not accrue until adjustment on final audit. It relates to an accounting requirement with reference to operations involving the MSTS charter, where, in fact, libelants were collecting time charter hire of $1,800 a day from the Navy Department for use of the whole vessel, that no more than $150 daily could be allocated by charterers as the part of their overall overhead chargeable to MSTS charter operations without their submitting detailed evidence as to the items and accounting methods for their allocation which were followed by the steamship companies in distributing their total overhead amongst their various types of operation. (See Appendix F, attached to this brief). It thus differs entirely from libelant's claims for statute violation and appears not to be dismissable, but to form correctly a part of South Atlantic's next or third cause of libel No. 1757.

This third cause of South Atlantic is for overpayments of $16,432.92 "under respondent's regulations." This cause of action (Arts. 21-22), like the $150 a day overhead ceiling (Art. 7), in effect merely alleges that accepting the legality of the Government's contract and regula-

tions such an amount is owing to South Atlantic upon making the necessary accounting adjustments on the final audit.[1] While Article 7 and this third cause contain no allegations of fact and may not state any claims, the accountings submitted by libelant show they are for accounting adjustments within the framework of the charter and are plainly not otherwise subject to respondent's exceptions and exceptive allegations. Accordingly we do not seek their dismissal. They illustrate the "adjustments" on final audit under the agreement to which Clause 13 and the regulations referred as remaining open until final audit.

[1] For the complexities of these adjustments under the agreement see esp. Supp. 21 (Pt. III C, and IV B, pp. 5-8, 10-15) relating to "Allocation among operations under bareboat charter agreements and 'other operations.'"

APPENDIX D

Relevant Clauses of the Charter

CLAUSE 2. (b) Subject to the foregoing provisions as to underwater parts in the event dry-docking is postponed, and except as to items noted on the delivery survey report as defective, the delivery of the Vessel by the Owner and the acceptance thereof by the Charterer shall constitute full performance by the Owner of all the Owner's obligations under Clause 1, and thereafter the Charterer shall not be entitled to make or assert any claim against the Owner on account of any agreements, representations or warranties, expressed or implied, with respect to the condition of the Vessel; provided, however, that the Owner shall nevertheless be responsible for the cost and time of repairs or renewals occasioned by latent defects in the Vessel, its machinery or appurtenances or defects due to locked in stresses in the Vessel existing at the time of delivery, not recoverable under the terms and conditions of the American Hull form of policy (American Institute of Marine Underwriters 7/1/41) containing no deductible average clause. For the purposes of this clause and of the Charter the delivery survey held for the immediately preceding WARSHIPDEMISEOUT form shall be deemed to be the delivery survey under this Charter.

CLAUSE 4. *Inventory.* A complete inventory of the Vessel's entire outfit, equipment, furniture, furnishings, appliances, spare and replacement parts and of all unbroached consumable stores, slop chest and fuel on board shall be jointly taken at the time of delivery, and mutually agreed upon as to items, by representatives of the Charterer and the Owner, and a similar inventory shall be taken and mutually agreed upon at the time of redelivery. The parties may agree, however, to accept any suitable prior inventory which may have been taken before the delivery of the Vessel under this Agreement, either on the occasion of the redelivery of the Vessel from a general agency agreement with the Owner, or otherwise.

CLAUSE 5. *Consumable stores and fuel.* The Charterer shall accept and pay for all unbroached consumable stores and fuel on board at the time of delivery (unless the vessel was under WARSHIPDEMISEOUT 203 form of charter entered into between the parties) and the Owner shall accept and pay for all unbroached consumable stores (with the exception of perishable stores, broached or unbroached, and slop chests, in the event the Vessel is redelivered at a port regularly serviced by the Charterer or at the port of redelivery provided for in Clause G of Part I hereof) and fuel on board (but not in excess of vessel's normal requirements in accordance with good operating practice), at the time of redelivery at the market prices current at the ports and times of delivery and of redelivery, respectively. "Consumable stores" within the meaning of this agreement shall mean all consumable and subsistence stores, and returnable containers (but not expendable equipment, scrap and junk) listed in the United States Maritime Commission Voyage Stores Reports, Forms 7915A, 7916A, 7918A, and 7919A (Revised Forms 1939), and slop chests.

CLAUSE 6. *Use of equipment.* The Charterer shall have the use of all outfit, equipment, furniture, furnishings, appliances, spare and replacement parts on board the Vessel at the time of delivery under this Agreement or any immediately preceding WARSHIPDEMISEOUT 203 form of charter between the parties, without extra cost and the same shall be returned to the Owner on redelivery in the same good order and condition as when received, ordinary wear and tear excepted. Any such items damaged or so worn in service as to be unfit for use (unless through ordinary wear and tear) or lost or destroyed shall be replaced or made good by the Charterer in kind at or before redelivery, or at Owner's option, the Charterer shall pay for said items at the current market prices at the port and time of redelivery. Any coverages accepted by the Owner shall be paid for at the current market prices at the port and time of redelivery.

CLAUSE 12. *Basic Charter Hire.* The Charterer shall pay to the Owner the basic charter hire at the monthly rate provided for in Part I hereof from the day and hour of delivery of the Vessels until and including the day and hour of redelivery to the Owner pursuant to the terms of this Agreement; or if any Vessel shall be lost, hire shall continue until the time of her loss, if known, or if the time of loss be uncertain then up to and including the time last heard from. Payment of such basic charter hire shall be made to the Owner at Washington, D. C., on delivery of the Vessel for the remainder of the calendar month in which delivery is made, and thereafter monthly in advance on the first day of each month.

CLAUSE 13. *Additional Charter Hire.* If at the end of the calendar year 1946, or any subsequent calendar year or at the termination of this Agreement, the cumulative net voyage profit (after the payment of the basic charter hire hereinabove specified and payment of the Charterer's fair and reasonable overhead expenses applicable to operation of the Vessels) shall exceed 10 per centum per annum on the Charterer's capital necessarily employed in the business of the Vessels (all as hereinafter defined), the Charterer shall pay over to the Owner at Washington, D. C., within 30 days after the end of such year or other period, as additional charter hire for such year or other period, an amount equal to the percentages of such cumulative net voyage profit in excess of 10 per centum per annum on such capital computed in accordance with the following table (but such cumulative net profit so accounted for shall not be included in any calculation of cumulative net profit in any subsequent year or period):

Cumulative net voyage profit (in excess of 10% per annum on capital necessarily employed) not in excess of $100 per day—50%.

Cumulative net voyage profit (in excess of 10% per annum on capital necessarily employed) in excess of

$100 per day but not in excess of $300 per day—75% on such excess over $100 per day.

Cumulative net voyage profit (in excess of 10% per annum on capital necessarily employed) in excess of $300 per day—90% on such excess over $300 per day.

The Charterer agrees to make preliminary payments to the Owner on account of such additional charter hire and on account of any additional charter hire accrued under any War Shipping Administration Form 203 (WARSHIPDEMISEOUT) charter (prior to the times of payment provided for above or in such WARSHIPDEMISEOUT charters) at such times and in such manner and amounts as may be required by the Owner; provided however, that such payment of additional charter hire shall be deemed to be preliminary and subject to adjustment either at the time of the rendition of preliminary statements or upon the completion of each final audit by the Owner, at which times such payment will be made to the Owner as such preliminary statements or final audit may show to be due, or such overpayments refunded to the Charterer as may be required.

Clause 14. *Termination.* Either the Owner or the Charterer may terminate the period of use of any of the vessels by giving written notice to the other party at least fifteen (15) days prior to the termination of any voyage hereunder, in which event the vessel shall be redelivered at the port of redelivery provided for in Clause G of Part I hereof upon termination of the voyage during which such notice is given.

Clause 15. *Redelivery of Vessel.* The Vessels shall be redelivered to the Owner (unless lost) pursuant to the terms of this Agreement in the same or as good order, condition and class as that in which they were delivered, unless the lack of good order, condition and class is due solely to ordinary wear and tear. At the redelivery survey provided for in Clause 2, surveyors representing both

the Charterer and the Owner, or a surveyor satisfactory to both sides, shall be present, who shall determine and state the repairs or work necessary to place the Vessel on the date of redelivery in the condition and class required in this paragraph which findings shall include all repairs or work (as distinguished from postponed annual or periodical surveys) required by outstanding classification or marine inspection requirements of the Coast Guard, Treasury Department, in effect as of date of delivery to place her in such condition. The Charterer, before redelivery, shall make all such repairs and do all such work so found to be necessary at its expense and time, or at Owner's option, the Charterer shall on Owner's request discharge such obligation by payment to the Owner of an amount sufficient to place the Vessel in such condition and class and to provide for the foregoing work and repairs at the prices current at the time of redelivery, which amount shall also include compensation at the rate of basic hire payable under this Agreement for the time reasonably required under then existing conditions to complete such work or repairs and compensation for other expenses (including insurance) incident to such work or repairs or which would have been borne by the Charterer if the repairs had been effected prior to redelivery. The Charterer shall not be required to make any repairs or to satisfy any classification or marine inspection requirements of the Coast Guard, Treasury Department, which were for Owner's account under Clause 2 of this Agreement but if such repairs were made or such requirements were satisfied after delivery under this Agreement and paid for by the Owner, they shall be considered as having been made at the time of delivery for the purpose of determining the Charterer's obligations under this Clause 15. In the case of any vessel which was under an immediately preceding WARSHIPDEMISEOUT 203 form of charter entered into by the War Shipping Administration and the Charterer the date of delivery referred to in this clause shall be deemed to be the date of delivery under such prior charter.